

**IOWA RACING AND GAMING COMMISSION  
MINUTES  
AUGUST 31, 2006**

The Iowa Racing and Gaming Commission (IRGC) met on Thursday, August 31, 2006 at Stoney Creek Inn, Johnston, Iowa. Commission members present were Kate Cutler, Chair; Gerry Bair, Vice Chair; and members Diane Hamilton and Greg Seyfer. Commissioner Toni Urban was absent.

Chair Cutler called the meeting to order at 8:30 AM, and requested a motion to approve the agenda. Commissioner Seyfer moved to approve the agenda as submitted. Commissioner Hamilton seconded the motion, which carried unanimously.

Chair Cutler moved to the approval of the minutes from the July 13, 2006 Commission meeting. Commissioner Hamilton noted one correction: on Page 5, the sixth paragraph should read "Chair Cutler" not "Chair Hamilton".

Hearing no further corrections to the minutes, Chair Cutler requested a motion. Commissioner Bair moved to approve the minutes from the July 13, 2006 Commission meeting as corrected. Commissioner Seyfer seconded the motion, which carried unanimously.

Chair Cutler called on Mr. Ketterer for announcements. Mr. Ketterer recognized former Commission Chair Diane Hamilton for her service to the Commission during one of the most challenging times the Commission has faced recently - the application process for new excursion gambling boats. He presented Commissioner Hamilton with a plaque with her gavel on it.

Continuing, Mr. Ketterer introduced Mark Vander Linden, the new director of the Iowa Gambling Treatment Program in the Department of Public Health. Mr. Vander Linden holds a BA in Social Work from the University of Iowa and a Master's Degree in Social Welfare from the University of California, Berkley. Previously, Mr. Vander Linden has been involved in clinical social work in the areas of children and families, substance abuse and HIV/AIDS. He has also served as director of school-based services at Seneca Center in Oakland, California, overseeing mental health programs in a three-county area. Just prior to joining the Department of Public Health, Mr. Vander Linden was a clinical supervisor at Mid Eastern Council on Chemical Abuse in Des Moines.

Mr. Ketterer provided the following information concerning upcoming Commission meetings:

- September 2006 – No Commission Meeting

- October Commission Meeting – October 5, 2006 – IOC Bettendorf, Bettendorf, IA (Submissions due by September 21, 2006)
- November Commission Meeting – November 9, 2006 – Stoney Creek Inn, Johnston, Iowa (Submissions due by October 26, 2006)
- December 2006 – No Meeting
- January Commission Meeting – January 11, 2007 – Stoney Creek Inn, Johnston, Iowa (Submissions due by December 27, 2006)
- February 2007 – No Meeting
- March Commission Meeting – March 1, 2007 – Terrible's Lakeside Resort, Osceola, Iowa (Submissions due by February 15, 2007)

Additionally, Mr. Ketterer advised that the Commission would be considering the racetrack renewal licenses and granting of race dates and racetrack enclosure gambling and table games license renewals at the October meeting. Those applications are due in the Commission's Des Moines office by the close of business on September 7<sup>th</sup>. During the March Commission meeting, the Commission will be taking up the renewal of the excursion gambling boat licenses.

Commissioner Bair noted that when the Commission awarded the four new licenses in May 2005, Commission members indicated their desire to wait 18-24 months before reviewing the direction of gambling in the state. He proposed that discussions be started at the March Commission meeting to determine the direction of the industry in the state for two reasons – the Commission members at that time indicated their desire to not review additional license applications until such time as the newly granted licensees had an opportunity to commence operations and there are two new members on the Commission who have not had an opportunity to voice their views on this subject. Commissioner Bair reiterated that the purpose of this agenda item would be to start discussions on this issue, nothing further.

Chair Cutler clarified that the discussion at the March meeting is not to determine a schedule for additional applications, but is a time for the Commission to hold a discussion on the direction of the gaming industry and establish an appropriate timeline. She noted that applications can be submitted at any time, but individuals following the Commission's business know that the Commission has made its view known with regard to additional applications at this time. Chair Cutler stated that any questions on this issue should be directed to Mr. Ketterer.

Chair Cutler called on Randy Winegard for an update concerning the site plan for the Burlington facility. Mr. Winegard stated that they had hoped to begin construction about a month ago; however, they encountered challenges with utilities at the site. This provided an opportunity to revisit the site plan and significant changes were made. Mr. Winegard advised that all of the structures remain the same except for the parking garage. Essentially, the site plan has been flipped; the parking garage will now be behind, and attached, to the casino. The revised plan provides better visibility of the recreational

lake, casino, and event center. All surface parking will be located next to the casino and event center.

Mr. Winegard noted that concerns had been raised regarding the proximity of the casino to the Fun City facility. He advised that with the site plan changes, the casino will be farther away from the hotel lobby of the Fun City hotel and a retail link will join the two facilities. The Fun City hotel and casino will no longer share a common lobby.

Mr. Winegard stated that they now plan to break ground between September 14<sup>th</sup> and 18<sup>th</sup>, 2006. Depending upon the weather, they hope to have the casino, event center and parking structure finished around Memorial Day. The hotel will be completed a month or two later.

Mr. Winegard stated that the changes will allow the addition of a large outdoor amphitheater for summer/good weather events. The stage will be located on an oversight area on the recreational lake, which can also be used as a stage. The amphitheater will have seating for over 2,000.

Chair Cutler asked what impact these changes would have on the projected costs. Mr. Winegard stated that he felt the changes would result in a reduction in costs. He stated the impetus for reviewing the site plan was the significant cost of burying some high voltage lines. When this project was first being looked at, copper prices were much lower than today, and the estimated cost to bury those lines was \$400,000. The latest estimate from Alliant Energy was \$1.1 million with no guarantee due to the volatility in copper prices. Mr. Winegard reiterated his opinion that the revised site plan is much better than the original; the only drawback is the delay in starting construction.

As there were no further questions for Mr. Winegard, Chair Cutler thanked him for the update, and called on Isle of Capri Bettendorf (IOCB). Mo Hyder, General Manager, for IOCB and Rhythm City Casino (RC), introduced Ken Ostempowski, Senior Director of Finance for the two properties.

Mr. Hyder provided a quick update on projects previously approved by the Commission. He noted that IOCB has made an investment of approximately \$65 million in downtown Bettendorf with the construction of a 258 room, twelve-story hotel. They expect to top off the hotel sometime in September, and it will be ready to be enclosed when the Commission is in Bettendorf in October. It is also anticipated that ground for the Event Center, being built by IOCB and the City of Bettendorf, will be broken in September. The IOCB hotel is expected to be completed sometime in April 2007, and the Event Center in July 2007.

At this time, Mr. Hyder turned the floor over to Mr. Ostempowski for review of the annual financial audit for IOCB. Mr. Ostempowski reported that the property had excellent cash flows, and a net income of \$3.7 million. In the last year, IOCB paid approximately \$29 million in gaming taxes - \$21 million to the state and \$4.2 million to

the Scott County Regional Authority. Eleven million was reinvested back into capital improvements - \$6.7 million for construction of the new hotel with the balance reinvested in the existing property.

Commissioner Bair noted that adjusted revenues for the first week of July, as reported on the Schedule of Adjusted Gross Revenue and Taxes and Fees, for Bettendorf and Davenport both dropped between 50-60%. He asked if the decrease was attributable to the 4<sup>th</sup> of July holiday. Mr. Ostempowski advised that the decrease was due to the timing of when the payments come through. He indicated that if Commissioner Bair would review the previous years' audits he would probably see the same drop. Mr. Ostempowski further indicated that it could be attributable to the adjustment of how the taxes are paid based on the State's fiscal year.

Hearing no further questions concerning the IOCB report, Mr. Ostempowski moved to the audit for RC. He stated that RC also had excellent cash flows, and net income of \$2.6 million. He reported that RC paid approximately \$22 million in gaming taxes - \$16 million to the state and \$3.2 million to Riverboat Development Authority. Additionally, approximately \$2.5 million was reinvested back into the existing property.

Commissioner Bair, referring to his earlier question, stated that he raised the issue as the cash flow appeared to have increased in Marquette during the time frame in question. Mr. Ostempowski reiterated that it has to do with the timing of the payments. Commissioner Bair stated that what he was hearing is that the procedure is not the same at all IOC properties. Mr. Ostempowski indicated that was correct.

Mr. Ketterer stated that it appeared the net income of the properties was contingent on how much is paid to the parent company, which was reduced significantly from 2005 to 2006. Mr. Ostempowski concurred. Mr. Ketterer asked the reason. Mr. Ostempowski stated that IOC restructured their debt; therefore the interest associated with the parent company debt decreased significantly, benefiting all IOC properties.

Hearing no further questions regarding the RC audit, Chair Cutler called on Isle of Capri Marquette (IOCM). Barron Fuller, General Manager, and Pam Colter, Senior Director of Finance, were present to address questions. Mr. Fuller advised that IOCM saw a 2% growth in year-over-year gaming revenue, with 57% of the total win coming from outside the state. Twelve million was spent on payroll expenses, with 53% going to Iowa-based team members. Additionally, all team members have access to an on-site health care clinic, with the majority of general services being offered free of charge. IOCM spent \$3.5 million on capital updates, which included a \$1 million update of the Calypso Café with all of the work provided by Iowa vendors. Gaming taxes - \$9 million to the state, \$200,000 to the Iowa Gambling Treatment Program, \$300,000 to Upper Mississippi Gaming Corporation, \$219,000 each to Clayton County and the County Endowment Fund and \$1.2 million to the City of Marquette. He indicated the City of Marquette has started the largest housing development in the history of the city. Another \$51,000 was disbursed through the property's Clayton County Community Development Fund. IOCM

is a strong supporter of United Way and contributed over \$33,000 the past year; team members raised over \$8,000 for their own Hurricane Relief Fund.

Commissioner Bair asked for a breakdown of the 57% win coming from out-of-state. Mr. Fuller provided the following break down: Wisconsin – 45%; Minnesota – 9%, and Illinois – 1%, and the rest is “other”.

Commissioner Bair noted that interest expenses were down. Mr. Fuller indicated that was the first time in the history of the property; he noted that operating expenses were up slightly.

Mr. Ketterer asked if the parent company has any long-term plans for the IOCM property that would impact the accumulated debt. Mr. Fuller stated that capital expansion projects are being looked at frequently. He indicated IOC was looking at purchasing a hotel located next door to the property; however, the asking price was too high for the property and three acres of land. He noted IOCM has experienced difficulties in the mitigation process for the twelve acres of wetland located behind the property in an attempt to expand parking and the property. Mr. Fuller indicated there is some development occurring in the area. The question has been raised as to whether the property would grow in Marquette. They are working with the City of Marquette at this time in an attempt to remedy the parking situation, which would allow them to expand the property on its current footprint.

As there were no additional questions for Mr. Fuller, Chair Cutler moved to the next agenda item – Argosy Casino Sioux City. Lorraine May, legal counsel for Belle of Sioux City and Penn National Gaming (PNG), stated that PNG, in connection with their purchase of Argosy, developed a new corporate structure that would more effectively incorporate Argosy into PNG. Ms. May pointed out that the license holder, Belle of Sioux City, LP, would remain the same and no new entities were added to the structural hierarchy or ownership of the licensees; and in fact, the change resulted in fewer entities. She requested the Commission’s approval.

Commissioner Bair stated his understanding of this request was that it would not result in any additional management fees, interest expenses, etc. Ms. May stated that the request before the Commission does not contain any operational changes; it is a simplification of the corporate structure and does away with one or two taxable entities.

Chair Cutler requested a motion. Commissioner Seyfer moved to approve the restructuring of PNG’s corporate structure. Commissioner Hamilton seconded the motion, which carried unanimously. (See Order No. 06-82)

Chair Cutler moved to the proposed sale of the Argosy V vessel. Richard Vitali, Associate General Counsel for Argosy Gaming, stated that when a larger vessel was brought to Sioux City, the Argosy V was sailed to Alton, IL, where it has been docked for the last two years. Argosy recently received a bid from Steiner Shipyard, Inc., a well-

known U.S. shipbuilder in Alabama. Mr. Vitali stated that it is a straight cash transaction that will close in approximately two weeks if the Commission approves the sale today.

Hearing no questions concerning the proposed sale of the Argosy V, Chair Cutler requested a motion. Commissioner Bair moved to approve the sale of the Argosy V to Steiner Shipyard, Inc. Commissioner Hamilton seconded the motion, which carried unanimously. (See Order No. 06-83)

Chair Cutler moved to the contract approval portion of the agenda and called on Harrah's. Mike Rich, General Manager, presented the following contracts for Commission approval:

- Cornerstone Energy, Inc. – Retail Provider of Natural Gas Services (Replacement)
- Game Plan Direct, LLC – Additional Vendor for Direct Mail Items (Increase)

Hearing no comments or questions concerning the contracts, Chair Cutler requested a motion. Commissioner Seyfer moved to approve the contracts as submitted by Harrah's. Commissioner Hamilton seconded the motion, which carried unanimously. (See Order No. 06-84)

Chair Cutler called on Diamond Jo (DJ). Jesus Aviles, General Manager for Diamond Jo Worth (DJW), presented the following contracts for Commission approval on behalf of DJ:

- McLeod USA – Telecommunications
- Sysco Food Services of Iowa – Food, Non-alcoholic Beverages, Smallwares and Equipment

Hearing no questions concerning the contracts, Chair Cutler requested a motion. Commissioner Hamilton moved to approve the contracts as submitted by DJ. Commissioner Seyfer seconded the motion, which carried unanimously. (See Order No. 06-85)

Chair Cutler called on DJW. Mr. Aviles presented the following contracts for Commission approval:

- A.H. Hermel Co. – Cigarettes, Grocery Items for The Jo Stop; Cigarettes for Casino (Increase)
- AON Risk Services – Insurance (Property, Equipment, Business, Auto, Pollution, Crime, etc.)
- Church Offset Printing – Printing and Direct Mail Services
- Cummins-Allison Corp. – Soft Count and Cage Equipment
- Deloitte & Touche, LLP – Audit, Consulting and Tax Service

- Flight Options, LLC – Air Travel
- Ron and Cathy Rofshus – Purchase of House Adjacent to Pheasant Links Golf Course

Mr. Aviles advised that the last contract is for a home located by the Emmons, MN golf course that DJW is purchasing. The home will be redecorated and utilized as part of the facility. Chair Cutler asked if it would serve as the club house for the course. Mr. Aviles stated the home is adjacent to the club house.

Commissioner Bair asked about the location of the golf course. Mr. Aviles stated that it is located on the opposite side of State Lake, approximately 7 miles west of the property. He stated that the hunting portion of the golf course/hunt facility is due to open in September, with the golf course opening next spring.

Commissioner Bair asked about the contract with Flight Options. Mr. Aviles stated that it is a brokerage firm that makes travel arrangements for all Peninsula Gaming executives. Commissioner Bair asked if the Iowa Travel Association submitted a bid. Mr. Aviles stated that Peninsula has utilized this company for some time; and that most of the money goes to the various airlines. Flight Options only receives a commission.

Hearing no further comments concerning the contracts, Chair Cutler requested a motion. Commissioner Bair moved to approve the contracts as submitted by DJW. Commissioner Hamilton seconded the motion, which carried unanimously. (See Order No. 06-86)

Commissioner Bair, noting that he had driven by the property recently, requested an update. Mr. Aviles stated that the hotel should be up and running by mid-November. Groundbreaking for the expansion took place three weeks ago. The moat portion of the construction is completed, and they hope to have it covered prior to winter setting in, so that work can continue inside over the winter. Mr. Aviles stated that patrons will be shielded from the construction as it will take place behind existing walls which will be removed once the expansion construction is completed.

Chair Cutler called on HGI Terrible's Lakeside (Lakeside). Damon Butler, General Manager, presented the following contracts for Commission approval:

- Bally Gaming Systems – Purchase 29 Slot Machines
- Brooner & Associates – Construction Work for Remodeling (Increase)
- IGT – Purchase Slot Machines

Commissioner Seyfer requested an explanation concerning the \$2 million increase to Brooner & Associates. Mr. Butler advised that Brooner is the contractor for all of the remodeling projects at the property, as well as current construction. He noted that HGI intends to continue making improvements to the C-Store, parking areas, the hotel and event center. They chose to submit an increase now rather than getting too close to the

approved amount. Contracts for actual work to be performed by vendors will be submitted.

Hearing no further questions, Chair Cutler requested a motion. Commissioner Seyfer moved to approve the contracts as submitted by Lakeside. Commissioner Hamilton seconded the motion, which carried unanimously. (See Order No. 06-87)

Chair Cutler called on Riverside Casino and Golf Resort (RCGR). Ken Bonnet, Chief Financial Officer, advised that the casino, restaurants and event center were completed a couple days ago; staff is tidying up and organizing the hotel today, but he feels the property will be 100% ready, except for the golf course, when the facility opens later today. He stated that three or four holes had been seeded and growing until the previous Saturday, when the area received a torrential rain. Mr. Bonnet noted that groundbreaking for the facility occurred on July 19, 2005, and offered his congratulations to everyone involved in the construction of the facility. He thanked IRGC and Division of Criminal Investigation staff for their part in testing the equipment and review of the surveillance system.

Mr. Bonnet presented the following contracts for Commission approval:

- Ahrens Concrete Floors, Inc. – Sidewalks and Paving
- D & R Masonry – Masonry Work
- Culvers Lawn & Landscape – Pool/Pro Shop Pavers
- Rheinschmidt Tile and Marble – Pool/Spa Flooring
- Leibold Irrigations, Inc. – GC Construction
- Interstate Power & Light Company – GC Electrical
- HP Software Licensing & Management Solutions - PC/Printers
- Trilix Marketing Group – Website Development
- Vital Support Systems – Services Support
- Valiant Manufacturing – Drapery
- Sysco Food Services of Iowa – Food

Hearing no questions concerning the contracts, Chair Cutler requested a motion. Commissioner Hamilton moved to approve the contracts as submitted by RCGR. Commissioner Seyfer seconded the motion, which carried unanimously. (See Order No. 06-88)

Commissioner Bair noted that RCGR made the front page of The Des Moines Register, not for the casino, but for their skybox at the University of Iowa. Mr. Bonnet stated they are receiving numerous calls on the golf course, but are getting calls from individuals inquiring if the facility has football seats, whether they provide a shuttle, have tailgate parties, etc. RCGR feels the tie-in with Iowa City will be a fun part of their on-property activities on property. Commissioner Bair asked if RCGR had a sports bar. Mr. Bonnet



stated that there is a series of large screen TVs around the feature bar in the middle of the property, but not a specific sports bar.

Chair Cutler asked when the golf course would be ready. Mr. Bonnet indicated RCGR is hoping for June or July, depending on the growing season. The original plan was to have the course totally seeded by September, which will not occur due to the significant rainfall in the area. The Pro Shop and other areas will be ready in about a month.

Hearing no further questions for Mr. Bonnet, Chair Cutler called on Mississippi Belle II/Wild Rose Clinton (MB II/WRC). Kevin Preston, General Manager, presented the following contracts for Commission approval:

- Aristocrat Gaming – Conversions/New Slot Product
- Bally Gaming – New Slot Product
- IGT – Conversions/New Slot Product
- WMS Gaming – Conversions/New Slot Product
- Simonson & Associates – Architecture Firm for New Casino Property in Clinton
- Wild Rose Entertainment – Management Contract for Clinton (RP)

Hearing no discussion concerning the contracts, Chair Cutler requested a motion. Commissioner Hamilton moved to approve the contracts as submitted by MB II/WRC. Commissioner Seyfer seconded the motion, which carried unanimously. (See Order No. 06-89)

Chair Cutler called on Wild Rose Emmetsburg (WRE). Mr. Preston presented the following contracts for Commission approval:

- ABC Electric – Services for Casino/Hotel
- Belin, Lamson, McCormick, Zumbach, Flynn – Legal Services
- Corporate Décor & More – Design/Decorations for Casino/Hotel
- Emmetsburg Utilities – Lift Station needed for Site & Surrounding Land
- IGT – Conversions/New Slot Product
- Johnson Brothers – Alcohol for Casino & Restaurant
- Kabrick Dist. Co. – Alcohol for Casino & Restaurant
- Martin Brothers – Food & Beverage/Kitchen Equipment
- Pepsi – Soda for Casino & Restaurant
- Rheinhardt Foods – Food for Casino & Restaurant
- RSM McGladrey – Accounting/Audit Services
- Sysco Food Services of Iowa – Food for Casino/Hotel
- Signs Plus – Additional Signage for Property
- Wild Rose Entertainment – Management Contract for Emmetsburg (RP)

Commissioner Hamilton asked about the contract with IGT, and if the property was already converting slot machines. Mr. Preston advised that they are doing some

conversions, and made some changes regarding machines during the opening. They are just insuring that they have a sufficient amount of funds approved for IGT.

Hearing no further questions concerning the contracts, Chair Cutler requested a motion. Commissioner Seyfer moved to approve the contracts as submitted by WRE. Commissioner Bair seconded the motion, which carried unanimously. (See Order No. 06-90)

Commissioner Bair noted that the facility had been open for about one quarter, and asked how operations were progressing. Mr. Preston stated that results are little ahead of expectations, and they are looking forward to continued progress. He feels the facility will see an increase in patronage during the winter as many residents/visitors to the area spend the bulk of the day on the water, arriving at the property later in the day, decreasing the amount of time they spend at the property.

Chair Cutler called on Bluffs Run Greyhound Park/Horseshoe Casino (BRGP/HC). Mr. Rich presented the following contracts for Commission approval:

- Cornerstone Energy, Inc. – Retail Provider of Natural Gas Services (Replacement)
- Pegler Sysco – Food Distributor

Hearing no questions concerning the contracts, Chair Cutler requested a motion. Commissioner Hamilton moved to approve the contracts as submitted by BRGP/HC. Commissioner Seyfer seconded the motion, which carried unanimously. (See Order No. 06-91)

Mr. Ketterer asked Mr. Rich to give Gaye Gullo, General Manager, the Commission's regards as today is her last day at the property. Mr. Rich advised that Ms. Gullo had indicated that of the seven gaming jurisdictions in which she has worked, Iowa was her favorite in terms of a working relationship with the Commission.

Commissioner Bair asked Mr. Rich if the Bass Pro Shop was having any impact on attendance at the property. Mr. Rich stated that the Bass Pro Shop has done OK, but are in a slow season right now until the hunting season arrives. He noted they have three larger festivals a year which drives some traffic to the facility, but overall, they have not had a major impact on attendance at BRGP/HC.

Chair Cutler called on Dubuque Greyhound Park & Casino (DGP&C). Bruce Wentworth, General Manager, presented the following contracts for Commission approval:

- Pepsi – Non-alcoholic Beverages
- Operating Engineers – Labor Agreement for Maintenance Department
- WMS Gaming – Lease Slot Machines and Replacements

- United Steelworkers – Labor Agreement for Security Department

Hearing no questions for Mr. Wentworth, Chair Cutler requested a motion. Commissioner Hamilton moved to approve the contracts as submitted by DGP&C.

Commissioner Seyfer asked a question concerning the dates on the union agreements. Mr. Wentworth advised that Commission staff informed DGP&C that one of the agreements was an older contract. DGP&C submitted one that the Commission had already approved meaning the Commission approved a separate third agreement twice. However, Commission staff indicated that the issue had not been resolved. At that point, DGP&C went back and reviewed all of their contract submissions and found two that had not been approved. Approval of these two contracts, which are renewals of previous contracts, brings the facility up to speed on contract approvals. Mr. Wentworth noted that DGP&C has had labor agreements for a number of years. No further labor agreements should be coming before the Commission until next August.

Chair Cutler requested a second to the prior motion. Commissioner Seyfer seconded the motion, which carried unanimously. (See Order No. 06-92)

Chair Cutler called on Prairie Meadows Racetrack & Casino (PMR&C). Derron Heldt, Director of Racing, was present to address questions concerning the 45-day season approval submission for the harness meet. He advised there were some changes since the plan was submitted in August: two racing officials submitted to work the harness meet will not be doing so, and under contracts, there is an agreement pertaining to harness racing for the 2006 season; however, at this time, the agreement has not been signed by either party.

Chair Cutler called for any comments and/or questions. Mr. Ketterer indicated there was an issue as to whether or not the individual named as Racing Secretary had taken the necessary United States Trotting Association (USTA) test. Mr. Heldt advised that the individual took the required test on Wednesday, August 30th.

Mr. Ketterer asked Mr. Heldt to comment on the position taken by PMR&C regarding the scraping of the track surface. Mr. Heldt advised that PMR&C has decided not to remove the surface utilized for the thoroughbred and mixed meets; believing they can sufficiently pack the current surface to simulate a limestone surface to make it safe for both horses and humans. Mr. Ketterer asked the last time PMR&C packed the racing surface versus scraping the track. Mr. Heldt stated that PMR&C packed the surface for six days of harness racing in 1999; however, in the ensuing years, they have removed the surface.

Chair Cutler asked PMR&C's reason for deciding not to remove the surface this year. Mr. Heldt reiterated his previous reason –PMR&C believes they can compact the current surface sufficiently to simulate a limestone base.

Commissioner Hamilton asked for the racetrack veterinarians' opinion on this topic. Mr. Heldt stated that since harness racing resumed at PMR&C in 1999, there has not been a catastrophic breakdown in either scenario – packed surface or limestone.

Commissioner Bair asked Mr. Heldt to explain what he meant by the term packed. Mr. Heldt stated that the facilities and track maintenance teams can roll the track and pack the whole surface used by the thoroughbreds and quarter horses in one day and achieve a compaction rate of approximately 90%.

Commissioner Hamilton asked about the costs associated with removing the current surface, putting down the limestone, and then resurfacing the track. Mr. Heldt indicated that cost is approximately \$230,000. Chair Cutler asked if that was approximately the same amount PMR&C has spent the last few years to have the track resurfaced. Mr. Heldt indicated the figure was in the ballpark. Commissioner Hamilton stated that she felt the Commission had received information that the scraping and resurfacing could be done for less than that amount.

Commissioner Bair asked what the usual procedure is at other tracks hosting harness racing – compaction or scraping the surface. Mr. Heldt stated that if Commissioner Bair was addressing the surfaces in Iowa where the Harness Racing Association (HRA) races, the surface the State Fair and county fairs would be similar to what PMR&C is proposing – hard, compacted; however, he can not address whether those tracks are strictly for harness racing, or if other racing (stock cars, etc.) take place on those tracks as well. Mr. Heldt stated there are several tracks around the country that have harness racing; however, PMR&C is unique in that it only has 14 days of harness racing. He stated there are six or seven thoroughbred/standard bred tracks around the country that run between 33 and 60 days of harness racing; those tracks remove the surface.

Commissioner Hamilton stated that she would like to hear from the harness racing group.

Commissioner Bair asked if PMR&C was leaving the facility open to liability issues due to injuries. Mr. Heldt answered in the negative; that it is the trainer's responsibility if a horse is injured on the track. Commissioner Bair stated that what he was hearing is that PMR&C is not accountable for injuries to the horses regardless of what they do to the track surface. Mr. Heldt stated that PMR&C and the three breeds racing there try to provide the safest track surface for both horses and humans. He noted that injuries can occur at any time in horses.

Royal Roland, President of the Iowa Harness Horsemen's Association (IHHA), stated that the IHHA has not been able to reach an agreement with PMR&C regarding the upcoming harness meet due to PMR&C's position regarding the track surface. Mr. Roland cited Commission rule 491-9.2(10)a which states: "The surface of a racetrack, including cushion, subsurface, and base, must be designed, constructed, and maintained to provide for the safety of the drivers and racing animals." Based on the reading of that rule, the IHHA feels PMR&C's request is contrary to IRGC rules. He stated that the

safety of the racing animal is of prime concern as the owners/trainers have invested several months in training, and do not wish to increase the possibility of injury. Mr. Roland submitted letters from two veterinarians that specialize in the treatment of horses. He agreed that it is impossible to predict what will cause an injury to a horse; but both veterinarians state that a packed track surface would increase the likelihood of injuries. Mr. Roland also submitted a letter from Eric Sharbaugh, Executive Vice President of the USTA, which states that to the best of his knowledge, there are no other pari-mutuel racetracks in North America that pack the racing surface; that all the other tracks hosting both thoroughbred and harness racing meets in the same year remove the surface.

Mr. Roland, referring to Mr. Heldt's comments regarding the track surface, wondered if PMR&C had done or reviewed any studies or sought professional expertise regarding their ability to safely pack the surface. Additionally, the IHHA believes PMR&C has made this decision based on economics because they don't want to spend the funds. Mr. Roland reiterated the IHHA's stance that PMR&C's request is contrary to Commission rules.

Commissioner Bair asked Mr. Roland to address Mr. Heldt's comments regarding the surfaces at the county fairs. Mr. Roland advised that the IHHA races at 13 different county fairs during the summer with some of the tracks having a limestone base, which is what they expect PMR&C to provide, while others have a dirt base consisting of a firm base, not loose material similar to a thoroughbred surface.

Commissioner Bair clarified his understanding that a packed track at PMR&C would not provide the same firmness as a county fair track. Mr. Roland answered in the affirmative.

Mr. Ketterer asked Mr. Roland to explain some of the issues leading to the decision to run on a packed track in 1999, and then to scrape the track surface in recent years. Mr. Roland prefaced his statement by indicating that in 1998 and 1999, harness racing occurred at PMR&C on a packed track but he was not sure whether the rule concerning track responsibilities was in effect at that time; nor had harness racing been held at the track from 1991 through 1998. The IHHA agreed to race on a packed track for two weeks in order to get harness racing back at PMR&C.

Commissioner Hamilton asked if the original agreement contained any requirements pertaining to the track. Mr. Roland stated that IHHA and PMR&C have had two agreements over the past eight years. A three-year agreement for 2003-2005 included the requirement that the track surface be scraped, and the last two years of the five-year agreement contained the same requirement.

Tom Flynn, legal counsel for PMR&C, Inc., stated that while this matter has been packaged and portrayed as a safety issue to get within the Commission's jurisdiction, it is really a money issue on both sides. He stated that in all of PMR&C's discussions with the IHHA to negotiate a contract, track safety has never been an issue; the issue has been that the IHHA wants PMR&C to remove the surface so the horses can achieve faster

times to allow the owners to sell their horses for a higher price following the conclusion of the harness meet. Mr. Flynn noted that Mr. Roland made such a statement to Dan Johnson, a writer for The Des Mines Register, which is consistent with the position taken by the standard bred during negotiations.

Mr. Flynn stated that if the safety of the horses and jockeys [drivers] was the real issue, this discussion would not be taking place as PMR&C would not allow the meet to occur on an unsafe surface exactly for the reasons raised earlier by Commissioner Bair. He stated that PMR&C has to be accountable for the track surface; it has to be safe for the jockeys [drivers] and horses; and PMR&C believes they can achieve that with a packed surface. He noted that with the removal of six inches of dirt from the track, taking it down to a limestone surface, the surface of the track has been changed from dirt to a sidewalk-type surface. Mr. Flynn stated that if a jockey [driver] or horse would happen to fall on the limestone surface, they could sustain much more serious injuries than a ligament injury if a head or leg would hit the limestone surface. He indicated that he had not seen the veterinarians' letters, but suggested that the standard bred could be exchanging a potential ligament strain for broken legs on the horses or skull damage for jockeys [drivers], which would be much more serious for either the jockey [driver] or horse should they fall. Mr. Flynn stated there is an exchange of safety risks going from one surface to the other..

Mr. Flynn reiterated his earlier comment that money, not safety, has been the main issue during negotiations between PMR&C and the IHHA. He conceded that, historically for the last five years, PMR&C has agreed to remove the surface as a luxury for the standard bred during negotiations. However, this year PMR&C was required to take \$1.3 million out of their charitable funds to support the standard bred at the county fairs in addition to paying the 11% required by statute; thus reducing the charitable budget from \$4 million to \$2.7 million. PMR&C receives over 300 applications each year for charitable bequests. Last year, PMR&C was able to give out \$4 million; this year they expect to receive more than 300 requests in excess of \$7 million but will only have \$2.7 million available. Mr. Flynn stated that PMR&C had received two quotes - \$234,000 and \$236,000 - to remove and then replace the track; and PMR&C would have to spend another \$50,000 for additional dirt. He stated these amounts could be taken out of the charitable budget as well. Mr. Flynn stated that PMR&C believes the standard bred are being well served by the track; pointing out that the \$1.3 million received for the county fair circuits does not fall under the jurisdiction of the Commission or PMR&C, nor does the IHHA provide an accounting of how the funds are spent. Mr. Flynn stated that PMR&C's Board of Directors feels this is a money issue, and does not believe they should be compelled to spend the additional funds to scrape the track so that owners can achieve faster track times in order to sell their horses for more money. He reiterated that PMR&C would not allow the meet to go on if they felt the potential for increased injuries to either horses or jockeys [drivers] would occur with packing the track rather than scraping it.

Commissioner Hamilton asked if there were a number of injuries when PMR&C did change the track surface to limestone. Mr. Flynn answered in the negative; indicating that he did not think there had been injuries under either scenario; just that the potential exists for more severe injuries on limestone surface than a packed surface. Commissioner Hamilton asked how he would respond to the letters from the veterinarians submitted by Mr. Roland. Mr. Flynn stated that his understanding is that the vets indicated there could be increased ligament issues which he feels is a risk of horse racing in general, and one that the thoroughbreds and quarter horses could make regarding the current track surface. Mr. Flynn stated had he been given an opportunity to interrogate the veterinarians, he would ask what risks they saw if the standards bred horses raced on limestone – a chance for a jockey [driver] or horse to have even more severe injuries than just a muscle strain.

Commissioner Hamilton stated that she would hate to think the veterinarians were submitting letters with incorrect information. Mr. Flynn stated that he was not saying the information was correct. Commissioner Hamilton stated that was her assumption based on Mr. Flynn's response. Mr. Flynn stated that he was not provided a copy of the veterinarian's letters. After reviewing Commissioner Hamilton's copies, Mr. Flynn again noted that the veterinarians are indicating a potential for ligament injuries,

Chair Cutler expressed concern about the safety issues and the proposed change requested by PMR&C; that she did not see a justification for the change except for economic reasons. She expressed her hope that PMR&C would not have to significantly reduce the charitable contributions; that the Board would determine a way to increase revenue to fund charitable donations to the same level.

Commissioner Bair stated that after reading the letters from the veterinarians, he does not believe there is any evidence to support the risk of increased or more severe injuries, and advised he would like to see some studies or something more substantial than a couple of letters. He stated that he also saw the comment in the newspaper regarding the increased times and the ability to receive more for their horses. Commissioner Bair stated that he would like to see further evidence concerning the injury situation to the horses based on a packed surface versus rhetorical evidence that they would be injured racing on such a surface when they race on something similar at the county/state fair.

Having made those comments, Commissioner Bair also expressed his concern about making the change after six years of scraping the track surface. He reiterated his request for additional information concerning injuries on a packed surface versus a limestone surface. Commissioner Bair asked Mr. Flynn if he felt PMR&C could be held accountable if they did not provide a safe racing surface. Mr. Flynn stated they are accountable under the Commission's rule, but also as the race meet host; PMR&C could not invite individuals to participate in a meet without providing a safe track.

Commissioner Hamilton asked when the harness meet would start. Mr. Heldt advised that it commences on September 22<sup>nd</sup>. Chair Cutler and Commissioner Hamilton noted

that does not provide the Commission sufficient time to receive additional information. Commissioner Bair stated his request was more long-term.

Commissioner Bair asked if this was the only issue preventing the two sides from signing a contract. Mr. Roland stated that PMR&C has not made a firm commitment as to whether or not the harness races will be simulcast outside the state of Iowa. He advised that the IHHA has agreed to pay half of the uplink costs. The proposed agreement states that PMR&C would accept one-half of the costs if they decided to simulcast the races. He requested an answer from PMR&C. Mr. Heldt advised that PMR&C would simulcast the races with the IHHA paying half the costs.

Mr. Ketterer asked Mr. Heldt if there was any indication on the stall applications sent to the harness owners that they would be running on a packed surface versus a limestone surface. Mr. Heldt answered in the negative.

Judy Roland, a Director on the USTA Board for Iowa, addressed Commissioner Bair's comments concerning the surfaces over which the different breeds race. Ms. Roland stated that nearly every track that races both thoroughbred and harness changes the track surface which she attributed to the different gait of the horses during a race. The resulting injuries from the softer surface are soft tissue injuries. Commissioner Bair thanked Ms. Roland for her comments; reiterating that the Commission does not have information reinforcing that fact. He concurred that they are doing it for safety, while PMR&C is maintaining that the harness owners want the change for economic reasons. Commissioner Bair stated they have received information that injuries increase by 43% when harness races take place on a packed surface. He stated that he would like to see any studies available on this issue. Ms. Roland stated more than likely the studies do not exist because harness races are not held on soft surfaces.

Ms. Roland asked Mr. Ketterer and PMR&C about a time five or six years ago when there were numerous injuries during the thoroughbred and quarter horse meets. After the completion of those meets and prior to the next meets being held, PMR&C totally redid the track as they found defects in the subsurface as a result of the manner in which the track had been maintained. Ms. Roland noted that since that time PMR&C has removed the rock surfaces. She inquired as to whether or not they have seen as many injuries as they did during that one season. Her reasoning: removal of the surface could be of value to PMR&C, allowing them to evaluate the subsurface for the safety of the thoroughbreds and quarter horses as well.

Mr. Ketterer indicated his concurrence with Ms. Roland's comments, but noted that racetrack composition and maintenance is a moving target – different tracks for different breeds, different climates, and the track consists of many different materials. Based on the weather, how often it's raced upon and maintenance, the track surface can change from season to season and day-to-day. Mr. Ketterer gave the following example: Arlington Park has experienced a substantial number of injuries and fatalities of horses this summer. The track brought in an expert to examine a specific area in a turn where



the problems had occurred; he could not find any problem. The Commission retained another two separate experts to examine the track; neither could find a problem that would cause the injuries and/or fatalities. Mr. Ketterer stated that injuries occur, sometimes in multiples that do not have a rational explanation; however, that does not mean that safety issues should be disregarded.

Mr. Ketterer questioned why PMR&C chose this method as a way to save money since they are trying to elevate the quality and stature of the racetrack in other areas to either meet or exceed industry standards. He stated that a limestone track for harness racing seems to be the standard in the industry. He noted that the stall applications have been sent out across the country to attract the best horses, trainers and drivers, and these individuals could arrive without knowing they will not be racing on a limestone surface. Mr. Ketterer stated that he felt that would be their expectation if they raced at harness tracks in other parts of country or at least one of PMR&C's stature.

Mr. Ketterer stated that the track surface issue concerns him, but is secondary to the safety issue. He stated that he was not sure if a definitive answer could be reached one way or the other; noting that there are differing opinions about how a packed surface would impact soft tissue injuries to standard bred horses. Mr. Ketterer noted that a packed track would maintain some moisture, and would become looser after three or four races. He recognized the fact that the IHHA has agreed to race on a packed track in the past, but is unsure whether they were gambling and were fortunate there were no injuries or if the surface was safe for the horses. Mr. Ketterer stated that he does not believe there is a definitive answer to the question.

Commissioner Seyfer stated he was not willing at this late stage, based on the information available, to allow PMR&C's request to run the harness meet on a packed track.

Commissioner Bair stated that if the Commission mandates the track be scraped, they would be interpreting the rule previously cited as being part of a safety issue as the Commission does not have any jurisdiction to mandate better times. He indicated that he concurred with Commissioner Seyfer's comments that the track should be scraped until such time as the Commission receives more definitive evidence regarding a limestone surface versus a packed surface. Commissioner Bair, noting that the process is costly, suggested that funds could be saved in some other area.

Commissioner Hamilton agreed with the previous comments, and indicated a desire to see additional information as well.

Hearing no further comments or questions, Chair Cutler requested a motion regarding the season approvals for the harness meet. Commissioner Hamilton moved to approve the 45-day season approvals for the harness meet with the following contingencies:

- The immediate written notification of any change in racing official positions.

- The completion of all necessary DCI backgrounds.
- Continuation of all import/export simulcast contracts being reviewed and approved by IRGC staff.
- Prior notification of any schedule changes: race days, post times, or the number of races.
- The track surface must be scraped and resurfaced with limestone as in the past.

Commissioner Seyfer seconded the motion, which carried unanimously. (See Order No. 06-93)

Chair Cutler moved to the additional contracts submitted by PMR&C. Gary Palmer, General Manager, presented the following contracts for Commission approval:

- Aristocrat Technologies, Inc. – Annual Maintenance for Slot and Table Games Tracking Systems (Increase)
- Atlantic City Coin & Slot Service – Lease of 2 Slot Machines
- Atlantic City Coin & Slot Service – Lease of 2 Slot Machines
- Atlantic City Coin & Slot Service – Lease of 2 Slot Machines
- Bally Gaming, Inc. – Lease Renewal for 1 Slot Machine
- Delta Dental Plan of Iowa – Dental Insurance for Employees
- Garner Printing – Printing Services
- IGT – Purchase of 4 Slot Machines
- IGT – Lease Renewal for 1 Slot Machine
- Nesbit Distributing Co. – Beer & Other Products for Resale (Increase)
- Pepsi Americas – Five Year Pour-Rights Agreement for Soft Drinks
- Slot Tickets – Purchase of Slot Game Tickets (Increase)
- U.S. Motorsports Corporation, d/b/a Iowa Speedway – Three Year Agreement for Promotion and Sponsorship
- Wellmark Blue Cross Blue Shield – Medical Insurance for Employees
- WMS Gaming Inc. – Purchase of 22 Slot Machines

Hearing no comments or questions concerning the contracts, Chair Cutler requested a motion. Commissioner Seyfer moved to approve the contracts as submitted by PMR&C. Commissioner Hamilton seconded the motion, which carried unanimously. (See Order No. 06-94)

Following a short break, Chair Cutler called on a representative from PMR&C to respond to comments made by Maggi Moss at the Commission's July meeting. Mr. Palmer stated he had provided Commission staff with a summary of all expenses incurred relating to the Festival of Racing held the first weekend in July, as well as a compilation of the various media exposure given to the Festival of Racing, both local and nationally. He advised that following the meeting with IRGC staff, PMR&C staff also met with representatives of the ITBOA and IQHRA, who had nothing but praise for how the Festival was handled. Mr. Palmer stated that PMR&C takes racing very seriously.

Commissioner Hamilton noted that the audience reached through The Blood Horse, Thoroughbred Times, and the Daily Racing Form would already be familiar with the Festival of Racing, and suggested that PMR&C should be trying to attract people outside the racing industry to the facility to experience the Festival of Racing.

Chair Cutler asked Mr. Palmer if PMR&C representatives had met with Ms. Moss. Mr. Palmer answered in the negative.

Commissioner Hamilton noted that Ms. Moss had indicated that no media was present at the airport when the horses arrived; however, it appears the media was informed and had the opportunity to be present if they so desired.

Chair Cutler requested a construction update. Mr. Palmer advised that the second floor addition, which added 25,000 square feet of casino floor, opened the first week of August. He indicated the project is progressing on schedule and under budget.

Chair Cutler moved to the update on the search for a new general manager at PMR&C. Mr. Palmer advised that PMR&C's Board of Directors had selected him as the new CEO/General Manager, and would be voting on his employment contract at their meeting later today.

Chair Cutler asked when Jack Bishop's term and compensation as interim general manager would end. Mr. Bishop stated that once the Board voted on Mr. Palmer's employment agreement, he would submit his resignation effective immediately, with compensation to continue for one month. Mr. Bishop stated that he felt operations had gone smoothly for the last few months and that everyone had done a good job.

Chair Cutler indicated that Commissioner Urban requested that the following questions be answered by a member of PMR&C's Board concerning a situation involving Mr. Palmer.

The first question requested verification of the settlement amount, the extent of the claims made by the individual, and the reason behind the settlement. Mr. Bishop stated that PMR&C has a binding agreement with the insurance company, and that it would be more appropriate for legal counsel to answer the questions. Mr. Flynn stated that the insurance company made the decision to settle the claim. He stated that once the claim was filed, the insurance company and complainant entered into negotiations and settled the matter without input from PMR&C. He indicated that he was not sure why the insurance company chose to handle the matter in that manner. Mr. Flynn stated that he does not have a firm settlement amount, noting that the settlement agreement contained a confidentiality clause. He stated that he would have to talk with the insurance company's legal counsel to determine if he can provide the information to the Commission via a sealed document.

Commissioner Bair noted that PMR&C had made a \$50,000 payment. Mr. Flynn advised that once the insurance company approved the settlement, PMR&C had to make the payment. Should the Board have elected to go against the insurance company's settlement, PMR&C would have been liable for the full amount.

Chair Cutler asked if PMR&C's Board was initially aware of the claim. Mr. Flynn noted that Board members had indicated they were not aware of the situation until an article appeared in the Des Moines Register. He stated there was an article in the paper in 2002 after a claim was filed with the Civil Rights Commission. PMR&C did respond to the claim; however the Civil Rights Commission, after collecting evidence from people involved, failed to take any action and never issued a ruling. Nothing further occurred until 2005 when the complainant requested permission from the Civil Rights Commission to file a civil lawsuit. Permission was granted, and a lawsuit was drafted, but was never filed as the parties entered into negotiations.

Chair Cutler asked if this issue was an agenda item at PMR&C Board meeting so that members were kept current. Mr. Flynn stated there were probably times when it could have been discussed. The agenda simply states "Closed Session for Purposes of Discussing Litigation". He indicated that he could not state for sure that specific issue was always the reason for the closed session.

Chair Cutler asked if the Board discussed this issue with anyone prior to offering the CEO/General Manager to Mr. Palmer. Mr. Flynn advised that the Board had discussions with Mr. Palmer and the head of Human Resources. The Board was comfortable with the responses and voted to offer Mr. Palmer the position.

Chair Cutler, noting that a motion to more fully investigate this matter was defeated, asked the Board's rationale behind the decision. Mr. Flynn reiterated that the Board was satisfied with the responses received during their discussions with Mr. Palmer and Human Resources, and felt there was no need to be concerned.

As there were no further questions or comments concerning the General Manager search at PMR&C, nor any Public Comment, Chair Cutler moved to the hearings for Harrah's and Argosy Casino – Sioux City for violations of Iowa Code Section 99F.9(5) for underage gambling.

Mr. Ketterer advised that a Stipulated Agreement had been reached in both instances. He provided the following scenario regarding the violation at Harrah's: On July 16, a minor male entered through the hotel turnstiles and was not asked for identification by the security officer, who was distracted by other patrons at that time. The minor was on the floor in excess of one hour, and consumed two alcoholic beverages, both of which were served by the same beverage server. Surveillance coverage shows the minor walking around the casino floor and sitting at various table games, but does not show him gambling. The minor came into contact with several casino employees, none of whom requested identification. The minor's mother approached facility staff later that day and

informed them that they had allowed her minor son to enter the casino and served him alcoholic beverages. Mr. Ketterer stated that Harrah's acknowledges the violation and has agreed to a \$10,000 administrative penalty. He requested the Commission's approval of the Stipulated Agreement.

Hearing no discussion or questions concerning the proposed Stipulated Agreement, Chair Cutler requested a motion. Commissioner Seyfer moved to approve the Stipulated Agreement between IRGC and Harrah's as submitted. Commissioner Hamilton seconded the motion, which carried unanimously. (See Order No. 06-95)

Mr. Ketterer provided the following summary of the situation at Argosy Casino – Sioux City (Argosy): On June 9, a minor and two companions entered through the turnstiles and walked by a security officer, who failed to ask for identification. The minor was able to gamble at several blackjack tables, and was also approached by a beverage server, which he declined. Approximately one hour after entering the casino, the minor was spotted by a dealer, who contacted her supervisor. When asked his age by the supervisor, the minor responded, "18". Mr. Ketterer stated that Argosy acknowledges the violation and agrees to pay an administrative penalty of \$10,000. Mr. Ketterer recommended approval of the proposed Stipulated Agreement.

Commissioner Bair commented on the fact that the minor was honest when questioned about his age. Chair Cutler stated that she liked the fact that the mother approached the facility about the situation in Council Bluffs.

Hearing no further comments or questions concerning the proposed Stipulated Agreement, Chair Cutler requested a motion. Commissioner Bair moved to approve the Stipulated Agreement between IRGC and Argosy as submitted. Commissioner Hamilton seconded the motion, which carried unanimously. (See Order No. 06-96)

Frank Quigley, General Manager of Argosy, advised the Commission that Argosy does take this issue seriously, and is proud of its track record pertaining to underage gambling. He indicated the facility has taken steps to correct the situation; discussions have been held with the appropriate employees and more emphasis placed on screening by all employees, not just security officers. Changes were made to the entrance to prevent patrons from being able to walk three or four abreast when entering the facility; the entrance was narrowed to allow only one person to enter at a time.

Mr. Rich advised that all employees are being required to retake the training on responsible gambling, and the security officers are going through an extensive training program. He stated that the security officer on duty at the time was disregarding policy when he was talking with a patron. Mr. Rich stated that Harrah's has installed hand-held scanner to insure that presented identifications are appropriate and legal. Mr. Rich stated that all patrons are asked questions regarding the identification being used to gain entrance to ensure it is their ID rather than someone else's.

Commissioner Bair asked if similar technology is being used at other facilities. Mr. Ketterer stated that the Commission does not dictate the method used to check identification; we are only interested in ensuring that no minors gain entrance to the gaming floor.

Commissioner Bair asked if it would be possible to conduct a quick survey of the facilities to determine what methods are utilized to check identification.

Chair Cutler moved to Administrative Business, and called on Mr. Ketterer to address the penalties for underage gambling. He stated that in order for a violation to come before the Commission there are three thresholds that have to be met: no identification requested when the minor passes through the entrance; the minor is on the gaming floor in excess of thirty minutes, giving other casino employees an opportunity to request identification; and whether or not the individual gambled or consumed alcohol. Mr. Ketterer stated that it is the responsibility of every casino employee to look for minors and check identifications, not just the security officers.

Mr. Ketterer stated that when the thresholds were established, an administrative penalty of \$10,000 for the first offense was agreed upon so that everyone would know what to expect. He indicated that all facts are recounted by reviewing surveillance tapes. Mr. Ketterer noted that it has been several years since the policies and penalties for underage gambling were established, and current members were not involved in the process. He feels now is an appropriate time for members to review this issue rather than just saying "This is the way it has always been done." Mr. Ketterer advised that he had asked Diane Hamilton and Kate Cutler, Chair and Vice Chair respectively at the time, to review the process and penalties and make recommendations to the Commission.

Chair Cutler stated that penalty has remained the same for ten years, and that it is time to review the penalty structure. Chair Cutler stated that discussions have been held, and she recommended that the penalties be raised as follows: \$20,000 for the first violation and \$30,000 for the second.

Mr. Ketterer advised that under the previous schedule if more than two violations occurred within 365 days, the penalty increased from \$10,000 to \$15,000, and if three or more violations occurred, the penalty was \$20,000.

Chair Cutler stated that the increases would be across the board and apply to all facilities. The Commission is looking at doubling the penalties, although the actual penalty would be subject to individual circumstances. She indicated the current penalties could be viewed as just a cost of doing business; however the increased penalties could entail a significant monetary outlay. Noting that the Commission had heard from both facilities involved today that they had taken steps to further address this issue, Chair Cutler encouraged all facilities to adopt procedures in order to protect Iowa's image.

Commissioner Bair noted that Riverside Casino and Golf Resort is close to the University of Iowa in Iowa City. He asked if a motion was necessary to double the penalties.

Mr. Ketterer stated that a motion was not necessary; that the Commission could just direct the staff to advise the licensees and Iowa Gaming Association of the revised administrative penalty schedule with regard to underage gambling violations.

Mr. Ketterer moved to the penalties for payments made to voluntarily excluded patrons. He noted there was some discussion at the July meeting concerning the Legislature's intent in this section of the Code and the lengths they went to in order to set up a self-exclusion program which could be shared by all facilities. Mr. Ketterer stated that under this program, it is realistic to expect that when identification is required for disbursements, tellers will cross-check it with the voluntary exclusion program in order to prevent payouts to voluntarily excluded patrons. Should a payout be made to a voluntary excluded patron, the facility is responsible for paying an equivalent amount to the Iowa Gambling Treatment Program (IGTP). Mr. Ketterer stated the question to the Commission is whether they want to establish penalties above and beyond the payment to the IGTP.

Commissioner Seyfer asked if the matter had to be decided today. Mr. Ketterer answered in the negative, and proceeded to recommend that Commissioners Bair and Seyfer review the matter to determine an amount, if any, that the facility would be required to pay in addition to the payment to the IGTP. He stated that the Commission doesn't expect everyone to recognize every individual in the program, but does expect that when an identification is checked and or required, that there are procedures in place to ensure that it is cross-checked with the database to avoid jackpot payouts to excluded patrons.

Mr. Ketterer stated that individuals could contact Commissioners Bair or Seyfer directly or the Commission office. Commissioner Bair requested that all contact be made through the Commission office.

Chair Cutler moved to the Petition for Declaratory Order, and called on Rick Olson. Mr. Olson stated that the term "jointly submitted" frustrated all parties during contract negotiations last year, and all felt there was no need to commence negotiations this year due to the Commission's stance on the issue last year, which was that "jointly submitted" meant that there had to be an agreement between all three breeds and PMR&C. Mr. Olson stated that the position of the Iowa Thoroughbred Breeders and Owners Association's (ITBOA) position is the same as he is articulating today. He noted that he had sent a letter summarizing his position on how the term "jointly submitted" should be interpreted and applied to minimum purse pools. Mr. Olson noted that previous to the 2006 race season, the ITBOA and Iowa Quarter Horse Racing Association (IQHRA) had negotiated long-term contracts with PMR&C, while the standard breeds have been unable to do so. He stated that the way in which the Commission interpreted the term for the 2006 race season would tie the hands of any of the horse groups if one group had veto power.

Chair Cutler asked Mr. Olson why he thought the legislature added the words “jointly submitted”; that they have some meaning. Mr. Olson stated they were included to establish minimum purse pools; however, the argument can be made that they were not necessary as the Commission already has the authority to regulate purse pools. He suggested the terminology was intended to codify past practice of the Commission, but established a dedicated amount from casino revenue that would go toward the minimum purse pool for which the breeds negotiate. Mr. Olson suggested that “jointly submitted” means an agreement reached between PMR&C and any one of the three horse groups, whether that be the thoroughbreds, quarter horses or standard breds.

Chair Cutler noted that the particular statute only went into effect in January of this year. Mr. Olson reiterated that it was for clarification of past practice regarding actions taken by the Commission.

Brad Schroeder, legal counsel for IHHA, advised that “jointly submitted” is meant to mean something entirely different than what the Commission was lead to believe in Mr. Olson’s recently submitted letter in which he suggests that “jointly submitted” agreement means PMR&C and one other group. Mr. Schroeder stated that “jointly submitted to the commission” means that PMR&C has to submit agreements with all three groups at the same time. He stated that the wording of the statute is plain, and there is no need to look at legislative intent. Mr. Schroeder pointed out that IHHA had been able to reach an agreement with PMR&C up until last year, at which time they looked to the Commission for assistance.

Mr. Schroeder stated that if the statute were interpreted in the manner suggested by Mr. Olson, PMR&C could negotiate contracts with the ITBOA and IQHRA that would leave nothing for purses for the standard breds, which would adversely affect the future of harness racing in the state.

Commissioner Bair asked if a group were left out if it would be due to the fact that no agreement had been reached. Mr. Schroeder indicated that would be a correct assumption; noting that the harness group had only encountered this problem in the last year following the language change; prior to that the IHHA had been party to a five-year agreement in the late 90’s and most recently a three-year agreement with the same terms reached with the other horsemen groups.

Chair Cutler stated that she is not a statutory interpreter attorney, but pointed out that the statute uses the term “agreements”, plural. Mr. Schroeder stated that the word “jointly” should be interpreted in the normal sense – jointly.

Scott Weiser, representing the Iowa Horsemen Benevolent and Protection Association, advised the Commission that he worked extensively on lobbying on the issue. He noted that the Legislature rejected language requiring all three breeds to reach an agreement; that there were several amendments submitted containing that language and all were rejected by the Senate leadership.



Commissioner Bair asked Mr. Weiser what he thought the term “jointly” meant. Mr. Weiser indicated his agreement with Mr. Olson; that he felt the Legislature was codifying past practice. Commissioner Bair asked Mr. Weiser if he thought the Legislature was reacting to the Commission’s action concerning purses and race dates for the 2006 racing season at PMR&C. Mr. Weiser answered in the negative; that this occurred after the Commission’s action.

Commissioner Bair asked what drove the legislation. Mr. Weiser stated that he was not sure, but pointed out that the IHHA proposed legislation requiring that PMR&C negotiate with all three breeds. He reiterated his belief that the Legislature was codifying past practice.

Commissioner Hamilton stated that she was sure why a change was needed if the only reason was to set in stone current practice. Mr. Weiser stated that the initial reason was to offer Code protection to the parties.

Chair Cutler wondered if the three breeds were not named due to the possibility that eventually there could be more than three breeds racing at PMR&C. Mr. Weiser stated naming the particular breeds would serve to invalidate negotiations and agreements reached with other breeds.

Mr. Schroeder advised that when the Commission last visited this issue, a letter was submitted that set forth the legislative process, which was very different than what was just presented. He indicated the legislative history on the books is the only way to know legislative intent for sure.

Mr. Olson stated that under statutory reconstruction law, the Iowa State Code requires interpretation in such a manner so as to avoid an absurd result. The way in which Mr. Schroeder is indicating the statute should be interpreted would allow one breed to prevent PMR&C to enter into, and submit, an agreement with any other breed. Mr. Olson stated this is the very reason he is seeking the Declaratory Order.

Mr. Roland advised that there has already been a meeting, in which the IHHA was not included, between PMR&C and the ITBOA and IQHRA. He reiterated the IHHA’s belief that “jointly submitted” means agreements between PMR&C and the three horsemen groups need to be negotiated and then submitted for the Commission’s approval at the same time.

Hearing no further comments or questions, Chair Cutler requested a motion to go into Executive Session. Commissioner Bair moved to go into Executive Session pursuant to Iowa Code Section 21.5(1)c for the purpose of discussing strategy with legal counsel in matters where litigation is imminent where disclosure would be likely to prejudice or disadvantage the position of the governmental body. Commissioner Hamilton seconded the motion, which carried unanimously on a roll call vote. (See Order No. 06-97)

Upon returning to open session, Chair Cutler requested a motion regarding the Petition for Declaratory Order. Commissioner Hamilton moved that the Commission would interpret “jointly submitted” to mean that purse agreements for all groups identified in the licensee’s application for race dates must be submitted together when the Commission considers the licensee’s race dates. Commissioner Bair seconded the motion, which carried on a 3-1 vote, with Commissioner Seyfer voting nay. (See Order No. 06-98)

Chair Cutler directed the Attorney General’s Office to prepare an Order consistent with the Commission’s motion.

As there was no further business to come before the Commission, Chair Cutler requested a motion to adjourn. Commissioner Hamilton so moved. Commissioner Bair seconded the motion, which carried unanimously.

MINUTES TAKEN BY:

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JULIE D. HERRICK